

Remarks:

The Examiner rejected claims 15-17 and 21-23 under 35 USC 103(a) as being unpatentable over Troiel in view of Cluyse, Wolf and Hummel.

The Examiner rejected claim 19 under 35 USC 103(a) as being unpatentable over Troiel in view of Cluyse, Wolf and Hummel and further in view of Jennings.

The Examiner rejected claims 24-26 and 28-30 under 35 USC 103(a) as being unpatentable over Troiel in view of Cluyse and Anderson.

The Examiner rejected claim 27 under 35 USC 103(a) as being unpatentable over Troiel in view of Cluyse, and Anderson and further in view of Jennings.

Applicant respectfully disagrees.

The examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case. The Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated:

*Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of*

ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy. . .

Office policy is to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103. As quoted above, the four factual inquiries enunciated therein as a background for determining obviousness are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a

reasonable expectation of success. Finally, to establish *prima facie* obviousness of a claimed invention, all the claim limitations (emphasis added) must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

**Claim 15:**

In regards to claim 15, the Examiner argued that Troiel teaches distance elements (15) attached via locking elements that are bent nails into receiving holes (12) in the top flange (11).

Claim 15 as amended recites, *inter alia*, locking elements fixedly and longitudinally positioned on said side elements of the back surface of said formwork module and having a pass-through opening configured to receive one end of a distancing element used to provide a parallel distance between the front surface of said formwork module and the front surface of another formwork module. This is clearly shown in at least Applicant's Figures 6 and 9-12. As can be appreciated, locking elements 40 are fixed to at least the side elements and positioned along the length of said side elements. Moreover, a pass-through opening is provided to receive distance element (18) as shown in Figures 6 and 12.

In clear contrast, Troiel teaches tie members (15) laid across the tops of the panels, as shown in the Figures, and a second horizontal row of panels is then set upon the tie member (15), the outer ends of which project outwardly so as to expose the slots (28). With the panels and tie members in this position, the anchor wedges (16) are put in place, the long prongs (29) thereof being inserted through the slots (28) and the slots (31) of the anchor wedges (16) embracing the upturned edge of the bottom channel of the bottom panel. Pins or nails may be inserted, as above stated, through the panel perforations (12) and tie member perforations (22a), to insure against sidewise displacement (col. 4, line 55 - col. 5, line 2).

Therefore, Troiel fails to teach or fairly suggest the locking elements **fixedly** (i.e., bent nails and anchor wedges are removable and not fixed to side elements) **and longitudinally positioned on said side elements** (i.e., Troiel's tie member/anchor wedge arrangement is placed between the bottom and top upturned edges of the channels of the panels) of the back surface of said formwork module and having a **pass-through opening configured to receive one end of a distancing element** (i.e., Troiel does not provide any pass-through opening since the tie member is just "sandwiched" between the panel's edges) used to provide a

parallel distance between the front surface of said formwork module and the front surface of another formwork module.

Thus, the Examiner has failed to establish a *prima facie* case of obviousness.

In addition, the Examiner argued that Troiel teaches linking elements (17) to help align adjacent formwork modules. The Examiner further argued that Troiel in view of Cluyse does not expressly disclose the linking element being a rectangular element having a receiving slot but that Wolf teaches a linking element (9) having a rectangular plate (12) with a receiving slot (13) and a linking pin (10).

Claim 15 as amended recites, *inter alia*, a L-shaped linking pin attached to the top surface of said linking element, wherein an end of said L-shaped linking pin is configured to be inserted into a hole of the plurality of holes of the side element of said framework module and into a hole of the plurality of holes of the side element of said another framework module. This is clearly shown in at least Applicant's Figures 4a, 5 and 8. As can be appreciated, a L-shaped linking pin 27 is attached on the top surface of the linking element 25.

In clear contrast, Wolf only teaches a linear pin 10 being part of a side surface of said rectangular plate 12. Moreover, Troiel only teaches linear pin 33 protruding perpendicular to a side surface 32 of said form lock 17.

Therefore, neither Troiel nor Wolf fail to teach or fairly suggest a L-shaped linking pin (i.e., Troiel's and Wolf's pins are linear pins and not L-shaped) attached to the top surface of said linking element (i.e., Troiel's pin protrudes perpendicular to a side surface of its form lock and Wolf's pin is part of a side surface of the rectangular plate of its linking element).

Thus, the Examiner has failed to establish a *prima facie* case of obviousness.

In addition, the Examiner argued that Troiel teaches that alignment elements (21, 21a) and gripping elements (fig 7 and 8) help to true up modules into a straight configuration.

Claim 15 as amended recites, *inter alia*, an alignment arrangement comprising an alignment element positioned against said side elements protruding perpendicular from said back surface of the formwork module and longitudinally extending between the side elements of said formwork

module, and a gripping element configured to be attached to said side elements of said formwork module and to selectively push said alignment element against said side elements protruding perpendicular from the back surface of the formwork module to horizontally align said formwork module against other laterally-positioned formwork modules. This is clearly shown in at least Applicant's Figures 1, 4, 5 and 7. As can be appreciated, alignment element 21 is positioned against (i.e., in contact with) said side elements protruding perpendicular from said back surface of the formwork module and longitudinally extending between the side elements of said formwork module as shown in at least Figure 1. Moreover, the gripping element 22 is configured to be attached to said side elements of said formwork module as shown in Figure 1 and to selectively push said alignment element against said side elements protruding perpendicular from the back surface of the formwork module to horizontally align said formwork module against other laterally-positioned formwork modules as shown in Figures 1, 5 and 7.

Applicant wants to point out that even if the Examiner were to give the claims their broadest reasonable interpretation, this interpretation has to be compatible with the present specification. Examiners are also reminded

not to apply a "broadest **possible** interpretation" standard, as it is a misapplication of MPEP § 2111.

The underlying meaning of a word as recited in the claims cannot be dismissed. While an Office Action might give claim limitations its broadest reasonable interpretation, this is not the complete standard. As required by MPEP § 2111, the claims must be given their broadest reasonable interpretation consistent with the specification. The Federal Circuit elaborated on this standard by requiring that the broadest reasonable interpretation must be "in light of the specification as it would be interpreted by one of ordinary skill in the art" per *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (emphasis added). In the present case, the claimed term "against" in the limitation "aligning element positioned against said side elements" is discussed in the present specification and shown in the Figures as the aligning element being in direct contact with said side elements and needs to be interpreted accordingly.

In clear contrast, Troiel teaches a vertical aligning member 21 positioned against the edges of the bottom and top channel of the panel (Figure 1) and a clamp 20 configured to be attached to braces 18 located in the back



surface of the formwork panel between the edges of the side channels of the panel (Figure 1). Troiel also teaches that it is occasionally necessary to provide horizontal aligning members 21a for cooperation with the vertical aligning member 21. Special clamps are provided for the reception of the horizontal aligning members 21a similar to clamp 20 but further comprising an extension 39a serving as a support for the horizontal aligning members 21a and a set screw 38a operable to force it into engagement with the vertical aligning member 21 (col. 5, lines 47-60).

Therefore, Troiel fails to teach or fairly suggest an alignment arrangement comprising an alignment element positioned against said side elements protruding perpendicular from said back surface of the formwork module and longitudinally extending between the side elements of said formwork module (i.e., Ttroiel's vertical aligning member is positioned against and longitudinally extends between the edges of the bottom and top channel of the panel), and a gripping element configured to be attached to said side elements of said formwork module and to selectively push said alignment element against said side elements protruding perpendicular from the back surface of the formwork module to horizontally align said formwork module against other laterally-positioned formwork modules.

Thus, the Examiner has failed to establish a *prima facie* case of obviousness.

**Claim 24:**

In regards to claim 24, the Examiner argued that Troiel teaches distance elements (15) attached via locking elements that are bent nails into receiving holes (12) in the top flange (11).

Claim 24 as amended recites, *inter alia*, locking elements fixedly and longitudinally positioned on said side elements of the back surface of said formwork module and having a pass-through opening configured to receive one end of a distancing element used to provide a parallel distance between the front surface of said formwork module and the front surface of another formwork module. This is clearly shown in at least Applicant's Figures 6 and 9-12. As can be appreciated, locking elements 40 are fixed to at least the side elements and positioned along the length of said side elements. Moreover, a pass-through opening is provided to receive distance element (18) as shown in Figures 6 and 12.

In clear contrast, Troiel teaches tie members (15) laid across the tops of the panels, as shown in the Figures, and a second horizontal row of panels is then set

upon the tie member (15), the outer ends of which project outwardly so as to expose the slots (28). With the panels and tie members in this position, the anchor wedges (16) are put in place, the long prongs (29) thereof being inserted through the slots (28) and the slots (31) of the anchor wedges (16) embracing the upturned edge of the bottom channel of the bottom panel. Pins or nails may be inserted, as above stated, through the panel perforations (12) and tie member perforations (22a), to insure against sidewise displacement (col. 4, line 55 - col. 5, line 2).

Therefore, Troiel fails to teach or fairly suggest the locking elements **fixedly** (i.e., bent nails and anchor wedges are removable and not fixed to side elements) **and longitudinally positioned on said side elements** (i.e., Troiel's tie member/anchor wedge arrangement is placed between the bottom and top upturned edges of the channels of the panels) of the back surface of said formwork module and having a **pass-through opening configured to receive one end of a distancing element** (i.e., Troiel does not provide any pass-through opening since the tie member is just "sandwiched" between the panel's edges) used to provide a parallel distance between the front surface of said formwork module and the front surface of another formwork module.

Thus, the Examiner has failed to establish a *prima facie* case of obviousness.

In addition, the Examiner argued that Troiel teaches that alignment elements (21, 21a) and gripping elements (fig 7 and 8) help to true up modules into a straight configuration. Moreover, the Examiner argued that Troiel in view of Cluyse does not expressly disclose the pair of spaced hooks of the aligning arrangement inserted into a plurality of holes in the side members.

Claim 24 as amended recites, *inter alia*, an alignment arrangement comprising an alignment element horizontally positioned against said side elements protruding perpendicular from said back surface of the formwork module and longitudinally extending between the side elements of said formwork module; a U-shaped gripping element having a first flat side, bottom flat side and second flat side defining a continuous interior space within; a pair of spaced hooks, each one extending away and coplanar from said first and second flat sides respectively and having a curved end portion; and a manually-actuated pressing means, said alignment arrangement is configured to horizontally align laterally-positioned formwork modules by inserting said alignment element inside the continuous interior space

of said U-shaped gripping element, inserting said pair of spaced hooks inside said plurality of holes of the side elements of said laterally-positioned formwork modules while said alignment element is inside the continuous interior space, and actuating said pressing means to push said alignment element against said side elements protruding perpendicular from the back surface of said laterally-positioned formwork modules effectively aligning horizontally said laterally-positioned formwork modules. This is clearly shown in at least Applicant's Figures 1, 4, 5 and 7. As can be appreciated, alignment element 21 is positioned against (i.e., in contact with) said side elements protruding perpendicular from said back surface of the formwork module and longitudinally extending between the side elements of said formwork module as shown in at least Figure 1. Moreover, the gripping element 22 is configured to be attached to said side elements of said formwork module as shown in Figure 1 and to selectively push said alignment element against said side elements protruding perpendicular from the back surface of the formwork module to horizontally align said formwork module against other laterally-positioned formwork modules as shown in Figures 1, 5 and 7.

Applicant wants to point out that even if the Examiner were to give the claims their broadest reasonable interpretation, this interpretation has to be compatible with the present specification. Examiners are also reminded not to apply a "broadest **possible** interpretation" standard, as it is a misapplication of MPEP § 2111.

The underlying meaning of a word as recited in the claims cannot be dismissed. While an Office Action might give claim limitations its broadest reasonable interpretation, this is not the complete standard. As required by MPEP § 2111, the claims must be given their broadest reasonable interpretation consistent with the specification. The Federal Circuit elaborated on this standard by requiring that the broadest reasonable interpretation must be "in light of the specification as it would be interpreted by one of ordinary skill in the art" per *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (emphasis added). In the present case, the claimed term "**against**" in the limitation "aligning element positioned against said side elements" is discussed in the present specification and shown in the Figures as the aligning element being in direct contact with said side elements and needs to be interpreted accordingly.

In clear contrast, Troiel teaches a vertical aligning member 21 positioned against the edges of the bottom and top channel of the panel (Figure 1) and a clamp 20 configured to be attached to braces 18 located in the back surface of the formwork panel between the edges of the side channels of the panel (Figure 1). Troiel also teaches that it is occasionally necessary to provide horizontal aligning members 21a for cooperation with the vertical aligning member 21. Special clamps are provided for the reception of the horizontal aligning members 21a similar to clamp 20 but further comprising an extension 39a serving as a support for the horizontal aligning members 21a and a set screw 38a operable to force it into engagement with the vertical aligning member 21 (col. 5, lines 47-60).

Therefore, Troiel fails to teach or fairly suggest an alignment arrangement comprising an alignment element positioned against said side elements protruding perpendicular from said back surface of the formwork module and longitudinally extending between the side elements of said formwork module (i.e., Troiel's vertical aligning member is positioned against and longitudinally extends between the edges of the bottom and top channel of the panel), and a gripping element configured to be attached to said side elements of said formwork module and to

selectively push said alignment element against said side elements protruding perpendicular from the back surface of the formwork module to horizontally aligned said formwork module against other laterally-positioned formwork modules.

Moreover, neither Troiel nor Anderson teach or fairly suggest the U-shaped gripping element having a first **flat** side, bottom **flat** side and second **flat** side defining a continuous interior space within.

Thus, the Examiner has failed to establish a *prima facie* case of obviousness.

The rest of the pending claims are allowable at least for the above-explained reasons.

The Examiner has failed to establish a *prima facie* case of obviousness. It is respectfully submitted the all the pending claims are allowable at least for the above-explained reasons.

Respectfully Submitted,

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